EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

ORIGINAL

Supreme Court, U.S.
FILED
DEC 18 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-849

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1985

PRESIDIO VALLEY FARMERS ASSOCIATION, et al.,

Petitioners

v.

AMADO SALAZAR CALDERON, et al.,

Respondents

On Petition for Writ of Certiorari
to the United States Court of
Appeals for the Fifth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO CERTIORARI

Edward Tuddenham
Texas Rural Legal Aid
1406 W. Highway 60
Hereford, TX 79045
(806) 364-3961

Attorney for Respondents

IN THE
UNITED STATES SUPREME COURT

PRESIDIO VALLEY FARMERS ASSOCIATION, et al.,	*	No. 85-849
Petitioners	*	
v.	*	
AMADO SALAZAR CALDERON, et al.	*	RESPONDENTS' BRIEF IN OPPOSITION
Respondents	*	

The Respondents, 492 Mexican farm workers, respectfully request this Court to deny the petition for writ of certiorari, seeking review of the Fifth Circuit's opinion in this case. That opinion is reported at 765 F.2d 1334.

REASONS WHY THE WRIT SHOULD BE DENIED

I. THERE IS NO CONFLICT IN THE CIRCUITS WITH REGARD TO ISSUE ONE AND PETITIONERS ARGUMENT IS WITHOUT MERIT

The Farm Labor Contractor Registration Act (FLCRA) provides for the award of actual or liquidated damages to a person aggrieved by the violation of FLCRA "if the court finds that the respondent has intentionally violated any provision of this Act..." 7 U.S.C. §2050a(b)(1977). In construing the word intentional, the Court of Appeals applied the test set out in an earlier case, Castillo v. Givens, 704 F.2d 181, 197-98 (5th Cir.) cert. den. ____ U.S. ___, 104 S.Ct. 160 (1983).

> Intentional means "conscious or deliberate" Id. at 197; there is no requirement of a specific intent to violate the FLCRA; rather the standard for an intentional violation [is] ...'the common civil standard which holds a person liable for the natural consequences of his or her acts.' Id. at 197-98.

Salazar, 765 F.2d at 1345.

Petitioners complain that this definition of "intentional" is too broad. However, every court which has construed FLCRA has applied a similar definition. See Alvarez v. Joan of Arc, Inc., 658 F.2d 1217, 1224 (7th Cir. 1981); Stewart v. James, 519 F.Supp. 315, 321 (E.D.N.Y. 1981); DeLeon v. Ramirez, 465 F.Supp. 698, 705 (S.D.N.Y. 1979). These decisions are in accord with cases construing the word "intentional" in other remedial statutes, such as Title VII, 42 U.S.C. § 2000e-5, Schaeffer v. San Diego Yellow Cabs, 462 F.2d 1002, 1006 (9th Cir. 1972); Kober v. Westinghouse Elec. Corp., 480 F.2d 240, 246 (3rd Cir. 1973), and the Truth In Lending Act, 15 U.S.C. §1640(c), Ratner v. Chemical Bank and N.Y. Trust Co., 329 F.Supp. 270, 281-282 (S.D.N.Y. 1971). These decisions are also in accord with the general construction of the word "intentional" utilized by

this Court. See Ellis v. U.S., 206 U.S. 246, 257 (1907).[1] In the face of such unanimity among the courts there is no reason to grant certiorari.

Petitioners' argument that the Fifth Circuit's construction of the word "intentional," conflicts with this Court's construction of the word "willful" in Thurston v. Trans World Airlines, ____ U.S. ____ (1985) is frivolous. "Intentional" and "willful" are different words, and have different meanings in the law. "Willful" carries a connotation of specific intent which is entirely absent in the word "intentional." Compare Thurston, supra, with Ellis supra. This difference in meaning is reflected in the different ways in which the words are used. "Intentional" is used in FLCRA to define the standard for civil liability; no damages or other relief of any kind may be awarded unless a violation is at least "intentional." 7 U.S C. § 2050a. "Willful" is used to define the standard for imposing FLCRA criminal sanctions. 7 U.S.C. § 2048(a). In the Age Discrimination and Employment Act (ADEA), 29 U.S.C. § 621, the statute construed in Thurston, "willful" is used to define those violations which are

---

[1] Ellis was a criminal case for employing workers in excess of 8 hours per day. Writing for the court, Justice Holmes stated:

> The argument against the [jury] instruction is that the word "intentionally" in the statute requires specific knowledge of the law; or at least that, to be convicted, Ellis must not have supposed, even mistakenly, that there was an emergency extraordinary enough to justify his conduct. The latter proposition is only the former a little disguised. Both are without foundation. If a man intentionally adopts certain conduct in certain circumstances known to him, and that conduct is forbidden by law under those circumstances, he intentionally breaks the law in the only sense in which the law ever considers intent.

206 U.S. at 257.

sufficiently egregious that they merit the award of punitive liquidated damages in addition to compensatory damages. Civil liability may be imposed under the ADEA whether or not a violation is "willful." Plainly, "intentional" and "willful" mean different things and are used in different ways in FLCRA and the ADEA. Petitioners argument that the two should be construed to mean the same thing is without merit.

II. PETITIONERS' SECOND ISSUE IS NOT PRESENTED BY THE RECORD IN THIS CASE.

The second question presented by the Petition for Certiorari argues that the petitioners should not be held liable for the 3/4 work guarantee required by DOL regulations because DOL never informed the Petitioners they had to pay the guarantee. Even overlooking the dubious merits of Petitioners argument, the record in this case does not allow the Court to decide the question presented. The record is replete with evidence that DOL repeatedly informed the petitioners of the requirements of the H-2 regulations including the 3/4 guarantee requirement. DOL representatives met personally with petitioners on several occasions; they sent copies of the DOL regulations to petitioners; they even traveled to Presidio to explain the regulations to the entire Association membership. To reach the question presented the court would first have to wade through the massive factual record in the case and conclude, contrary to the lower courts, that the petitioners had no knowledge that the guarantee was required. Such an effort could have no importance to anyone other than the parties to this case and would be a waste of this Court's time.

Petitioners argument that the Court of Appeals engaged in improper fact finding is similarly without merit and unworthy of review. The district court considered the facts surrounding the 3/4 grarantee requirement and excused compliance with the guarantee solely because of the hardship it imposed on the growers. The Court of Appeals reversed, not because it took a different view of the facts, but because it found, as a matter of law, that it was improper for the district court to consider hardship. 767 F.2d at 1342-43; A-43. The cases cited by the Court of Appeals fully supported that conclusion. Thus, petitioner's second issue rests on a misunderstanding of the Fifth Circuit opinion and is not, in fact, presented by the record in this case.

III. PETITIONERS THIRD ISSUE PRESENTS ONLY FACTUAL QUESTIONS THAT ARE NOT WORTHY OF REVIEW

Petitioners third issue challenges the Fifth Circuit's decision to allow the district court to decide on remand whether respondents waived their claim to actual damages. This issue presents no questions of law; it turns entirely on a factual analysis of the voluminous and convoluted record to determine whether respondents intended to waive their claims. That record is sufficiently difficult to decipher that the Court of Appeals could not decide whether a waiver had occurred and remanded to the district court to decide in the first instance. 765 F.2d at 1349 n.13; A-56. If the Court of Appeals did not feel competent to resolve this factual dispute, there is surely no reason for this Court to try.

CONCLUSION

For the foregoing reasons, the Petition For Writ of Certiorari should be denied.

Respectfully submitted,

Edward Tuddenham
Texas Rural Legal Aid
1406 W. Highway 60
Hereford, TX 79045